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CAA-5-99-041

4. Pursuant to Section 109 of the Act, 42 U.S.C. § 7409, the Administrator of the U.S. EPA (the "Administrator") has promulgated national ambient air quality standards ("NAAQS") for certain listed air pollutants, including ozone. A volatile organic compound (VOC) is a precursor to ozone. 40

C.F.R. §50.6.

5. Section 107(d) of the Act, 42 U.S.C. § 7407(d), requires each state to designate those areas within its boundaries in which air quality is better than the NAAQS for each listed pollutant, those areas in which it is worse, and those areas which cannot be classified due to insufficient data. An area which meets the NAAQS for a particular pollutant is an "attainment" area; an area which does not meet the NAAQS is a "nonattainment" area; and an area which cannot be classified due to insufficient data is "unclassifiable."
6. Section 110 of the Act, 42 U.S.C. § 7410, requires each state to submit to the Administrator, for approval or disapproval, a plan (state implementation plan or SIP) for the implementation, maintenance, and enforcement of the NAAQS.
7. On November 7, 1984, the Administrator approved 326 Indiana Administrative Code (IAC) 8-1-6 as part of the federally enforceable SIP for Indiana. 51 Fed. Reg. 4915. 326 IAC 8-1-6 requires new facilities (as of January 1, 1980) which have potential VOC emissions of 25 tons or more per year and which are not otherwise regulated by other provisions of article 8 (VOC regulations), to reduce VOC emissions using

Best Available Control Technology (BACT).

8. On October 7, 1994, the Administrator approved 326 IAC 2-1-3 as part of the federally enforceable SIP for Indiana. 59 Fed. Reg. 51108. 326 IAC 2-1-3 authorizes the Commissioner of the Indiana Department of Environmental Management (IDEM) to issue construction permits and establishes construction permit requirements for sources and facilities. The rule requires the Commissioner to include in a construction permit all conditions necessary to ensure that the source or facility will comply with all applicable rules; and that the ambient air quality standards, the prevention of significant deterioration standards, and offset requirements will be attained and maintained and that public health will be protected.
9. On October 17, 1995, the Administrator approved 326 IAC §§ 2-8-2 and 2-8-44 as part of the federally enforceable SIP for Indiana. 60 Fed. Reg. 43008. 326 IAC § 282 authorizes the Commissioner to issue federally enforceable state operating permits (FESOPs). 326 IAC 2-8-4 requires that each FESOP include emission limitations and standards that assure compliance with all applicable requirements at the time of FESOP issuance.

10. Pursuant to 40 C.F.R. § 52.23, failure to comply with a construction permit issued pursuant to 326 IAC § 2-1 is a violation of the Indiana SIP. 40 C.F.R. § 52.23 further provides that any failure to comply with any permit limit or condition contained in an operating permit issued under an EPA-approved program that is incorporated into the state SIP is a violation of the SIP. Therefore, violation of a FESOP issued by IDEM is also a violation of the Indiana SIP.
11. Pursuant to Section 113(a)(1) of the Act, 42 U.S.C. § 7413(a)(1), whenever the Administrator finds that any person has violated a SIP or permit, the Administrator may, 30 days after notifying the violator and the state of the violation, issue an administrative penalty order.
12. Section 114(a) of the Act, 42 U.S.C. § 7414(a), authorizes the Administrator to require any person who owns or operates an emission source or who is subject to a requirement of the Act or a SIP to sample its emissions, to make reports, to install monitoring equipment, and to provide any other information the Administrator needs to determine whether the source has violated any standard of performance, any emission standard, or any SIP provision.
13. Pursuant to Section 113(a)(3) of the Act, 42 U.S.C.

§ 7413(a)(3), whenever the Administrator finds that any person has violated an order issued under Section 114 of the Act, the Administrator may issue an administrative penalty order.

14. Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), authorizes the Administrator to assess a civil penalty of up to \$25,000 per day of violation up to a total of \$200,000 for violations that occurred prior to January 31, 1997. The Debt Collections Improvements Act of 1996, 31 U.S.C. § 3701, and its implementing regulations at 40 C.F.R. Part 19 increased the statutory maximum penalty to \$27,500 per day of violation up to a total of \$220,000 for violations that occurred on or after January 31, 1997.
15. Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), limits the Administrator's authority to bring an administrative action to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the action, except where the Administrator and Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.
16. The Attorney General of the United States and the

Administrator of U.S. EPA, each through their respective delegates, have determined that an administrative assessment of civil penalties is appropriate for the period of violations alleged in this Complaint.

**General Allegations**

17. EP Graphics owns and operates a printing facility at 169 South Jefferson Street, Berne, Indiana 46711.
18. EP Graphics' Berne Indiana facility is located in an area which has been designated as attainment for ozone.
19. On April 1, 1996 IDEM issued a construction permit (CP 001-4963) to EP Graphics authorizing it to construct several pieces of equipment at its Berne, Indiana facility, including two web fed lithographic presses known as press #62 and press #66.
20. Press #62 has the potential to emit 25 or more tons of VOCs per year.
21. Press #66 has the potential to emit 25 or more tons of VOCs per year.
22. Construction permit CP 001-4963 established BACT-allowable emission limitations and operating parameters for press #66 and for the catalytic oxidizer controlling VOC emissions from this press.

23. On December 11, 1996, IDEM issued FESOP F001-5957-00039 to EP Graphics pursuant to 326 IAC 2-8-4. The FESOP contained emission limitations and operating requirements for presses #62 and #66.
24. On June 11, 1998, U.S. EPA issued to EP Graphics a request for information pursuant to Section 114 of the Act (Section 114 request).
25. The Section 114 request required EP Graphics to test the destruction and capture efficiency of presses #62 and #66 within 35 days of receipt of the request.
26. On September 30, 1998, U.S. EPA issued a notice of violation to EP Graphics alleging violation of its Construction permit CP 001-4963, its FESOP F001-5957-00039, and the Indiana SIP in that it failed to meet the required 90% VOC destruction efficiency, failed to meet the required 100% VOC capture efficiency, and failed to continuously record the temperature of the oxidizers, and that it violated the Section 114 request by failing to perform destruction and capture efficiency tests by the date required in that request.
27. On November 4, 1998, U.S. EPA and EP Graphics held a conference to discuss the September 30, 1998 notice of

violation.

Count I

28. Paragraphs 1 through 27 of this Complaint are incorporated by reference as if fully set forth in this paragraph.
29. Condition #10 of EP Graphics' construction permit, CP 001-4963, requires that the catalytic oxidizer serving press #66 operate at all times while press #66 operates and that it destroy at least 90% of the VOCs captured.
30. EP Graphics' FESOP requires that the catalytic oxidizer serving presses #62 and #66 operate at all times while these presses operate and that the catalytic oxidizers destroy at least 90% of the VOCs captured.
31. 326 IAC 8-1-6 requires both press #62 and press #66 to comply with BACT.
32. BACT for press #62 requires reduction of VOCs with a catalytic oxidizer with at least 90% destruction efficiency.
33. BACT for press #66 requires reduction of VOCs with a catalytic oxidizer with at least 90% destruction efficiency.
34. Results of tests conducted by EP Graphics on November 22 and 23, 1996 indicated that the average destruction efficiencies of the oxidizers for presses #62 and #66 were 74% and 83% respectively.



35. EP Graphics' failure to achieve a 90% destruction efficiency for presses #62 and #66 is a violation of its construction permit CP 001-4963, its FESOP, and the Indiana SIP.

**Count II**

36. Paragraphs 1 through 27 of this Complaint are incorporated by reference as if fully set forth in this paragraph.
37. Condition #10 of EP Graphics' construction permit CP 001-4963 requires that the catalytic oxidizer serving press #66 operate at all times while press #66 operates and that it maintain a 100% capture efficiency.
38. 326 IAC 8-1-6 requires both press #62 and press #66 to comply with BACT.
39. BACT for press #62 requires reduction of VOCs with a catalytic oxidizer with 100% capture efficiency.
40. BACT for press #66 requires reduction of VOCs with a catalytic oxidizer with 100% capture efficiency.
41. In a letter dated June 25, 1998, EP Graphics certified that it could not meet the required 100% capture efficiency requirements for presses #62 and #66.
42. EP Graphics' failure to capture 100% of the VOC emissions from presses #66 and #62 is a violation of its construction permit and of the Indiana SIP.

Count III

43. Paragraphs 1 through 27 of this Complaint are incorporated by reference as if fully set forth in this paragraph.
44. Section D.1.4 of EP Graphics' FESOP requires that the catalytic oxidizer for press #62 operate at all times that press #62 is operating and that the catalytic oxidizer for press #66 operate at all times that press #66 is operating.
45. Section D.1.4 of EP Graphics' FESOP requires that the catalytic oxidizers for presses #62 and #66 maintain a minimum temperature of 650°F or the temperature determined in compliance tests to maintain at least 90% destruction of the VOC captured, and that EP Graphics continuously record the temperature of the exhaust from the catalytic oxidizers whenever they are operating.
46. EP Graphics did not continuously record the temperature of the exhausts from the catalytic oxidizers for presses #62 and #66 prior to June of 1998.
47. EP Graphics' failure to continuously record the catalytic oxidizer temperature for presses #62 and #66 was a violation of condition D.1.4. of its FESOP and of the Indiana SIP.

Count IV

48. Paragraphs 1 through 27 of this Complaint are incorporated

by reference as if fully set forth in this paragraph.

49. The Section 114 request issued by U.S. EPA to EP Graphics on June 11, 1998 required EP Graphics to conduct a performance test on the emissions from the catalytic oxidizers serving presses #62 and #66 no later than 35 days after receipt of the request.
50. EP Graphics received the section 114 request on June 15, 1998.
51. EP Graphics did not conduct the performance test until September 29, 1998.
52. EP Graphics' failure conduct a performance test within 35 days of its receipt of the Section 114 request was a violation of that request.

**Notice of Proposed Order Assessing a Civil Penalty**

53. Section 113(e)(1) of the Act, 42 U.S.C. § 7413(e)(1), requires the Administrator to take the following factors into consideration when determining the amount of any penalty assessment under Section 113(d):
  - a. the size of Respondent's business;
  - b. the economic impact of the proposed penalty on Respondent's business;
  - c. Respondent's full compliance history and good faith efforts to comply;

- d. the duration of the violations alleged in the Complaint as established by any credible evidence;
- e. Respondent's payment of penalties previously assessed for the same violations;
- f. the economic benefit of noncompliance;
- g. the seriousness of the violations; and
- h. such other factors as justice may require.

54. Based upon an evaluation of the facts alleged in this complaint and the factors set forth in Section 113(e)(1) of the Act, Complainant proposes that the Administrator assess a civil penalty against Respondent of \$119,000. In developing the proposed penalty, Complainant evaluated the facts and circumstances of this case with specific reference to U.S. EPA's Clean Air Act Stationary Source Penalty Policy dated October 25, 1991, a copy of which is enclosed with this complaint.

55. In determining the proposed penalty, Complainant considered the economic benefit that Respondent received from the violations. The penalty must be sufficient to prevent the violator from gaining a monetary benefit from avoiding or delaying the expenditures that are necessary to comply. Respondent received an economic benefit from its delay in replacing a faulty control device and from its delay in

conducting a performance test required by the Section 114 request. The delay of these expenditures resulted in an economic benefit to Respondent of \$16,592.

56. In determining the proposed penalty, Complainant considered the seriousness of Respondent's violations. One factor reflecting the seriousness of the violations is the amount of the pollutant emitted as a result of the violation. Complainant compared the highest detected emissions from each press (17% and 26% of VOCs captured) with the requirement that no more than 10% of VOCs captured be emitted to the atmosphere. Accordingly, the proposed penalty includes a component corresponding to the actual or potential environmental harm from the violations.
57. In evaluating the seriousness of the violations, Complainant also considered the air quality status of the area in which Respondent's facility is located. Respondent's facility is located in an ozone attainment area. 40 C.F.R. § 81.315. Accordingly, the proposed penalty includes a component corresponding to the actual or potential harm from a violation in an attainment area for ozone.
58. In considering the seriousness of the violations, Complainant also considered the importance of record keeping

and of timely responding to Section 114 requests, to achieving the goals of the Act and its implementing regulations. Accordingly, the proposed penalty includes a component corresponding to the importance of these violations to the regulatory scheme.

59. Complainant considered the duration of the violations in assessing the actual or possible harm resulting from the violations. EP Graphics failed to comply with the required capture efficiency requirements for 33 months; failed to continuously record the temperature of both oxidizers for 18 months; and was 2 months late in performing the stack testing required by the June 11, 1998 Section 114 request. Complainant based the penalty on the duration of these violations.
60. Complainant considered the size of Respondent's business in determining the appropriate penalty. Accordingly, the proposed penalty includes a component which is based on Respondent's net worth.
61. Complainant considered Respondent's compliance history and its good faith efforts to comply. Because Complainant is unaware of any prior citations against Respondent for violating environmental laws, Complainant has not increased

the proposed penalty based on this factor.

62. Complainant considered the economic impact of the proposed penalty on Respondent's business. Based on the best information available to Complainant at this time, including the financial information provided by EP Graphics, the proposed penalty reflects a current presumption of Respondent's ability to pay the penalty and to continue in business.
63. Complainant developed the proposed penalty based on the best information available to Complainant at this time. Complainant may adjust the proposed penalty if Respondent establishes bonafide issues of ability to pay or other defenses relevant to the penalty's appropriateness.

**Penalty Payment**

64. Respondent may pay the proposed penalty by sending a certified or cashier's check, payable to "Treasurer, the United States of America", to:

U.S. Environmental Protection Agency  
Region 5  
P.O. Box 70753  
Chicago, Illinois 60673

65. The check and the letter transmitting the check should reference the case name and docket number of this

administrative complaint. Respondent must send copies of the check and transmittal letter to:

Attn: Cynthia Curtis, (AE-17J)  
Air Enforcement and Compliance Assurance Branch  
Air and Radiation Division  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

and

Janice S. Loughlin (C-14J)  
Associate Regional Counsel  
Office of Regional Counsel  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

**Rules Governing This Proceeding**

66. The "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits" (the Consolidated Rules) at 64 Fed. Reg. 40138 (1999) (to be codified at 40 C.F.R. Part 22) govern this proceeding to assess a civil penalty. Enclosed with the complaint served on Respondent is a copy of the Consolidated Rules.

**Opportunity to Request a Hearing**

67. The Administrator must provide an opportunity to request a hearing to any person against whom the Administrator



proposes to assess a penalty under Section 113(d)(2) of the Act, 42 U.S.C. § 7413(d)(2). Respondent has the right to request a hearing on any material fact alleged in the complaint, or on the appropriateness of the proposed penalty, or both. To request a hearing, Respondent must specifically make the request in its answer, as discussed in paragraphs 68 through 74 below.

**Answer**

68. Respondent must file a written answer to this complaint if Respondent contests any material fact alleged in the complaint; contends that the proposed penalty is inappropriate; or contends that it is entitled to judgment as a matter of law. To file an answer, Respondent must file the original written answer and one copy with the Regional Hearing Clerk at the following address:

Regional Hearing Clerk (R-19J)  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

69. If Respondent chooses to file a written answer to the complaint, it must do so within 30 calendar days after receiving the complaint. In counting the 30-day time period, the date of receipt is not counted, but Saturdays,

Sundays, and federal legal holidays are counted. If the 30-day time period expires on a Saturday, Sunday, or federal legal holiday, the time period extends to the next business day.

70. Respondent's answer must clearly and directly admit, deny, or explain each of the factual allegations in the complaint or must state clearly that Respondent has no knowledge of a particular factual allegation. Where Respondent states that it has no knowledge of a particular factual allegation, the allegation is deemed denied.
71. Respondent's failure to admit, deny or explain any material factual allegation in the complaint constitutes an admission of the allegation.
72. Respondent's answer must also state:
  - a. the circumstances or arguments which Respondent alleges constitute grounds of defense;
  - b. the facts that Respondent disputes;
  - c. the basis for opposing any proposed relief; and
  - d. whether Respondent requests a hearing.
73. Respondent must send a copy of the answer and any documents subsequently filed in this action to Janice S. Loughlin, Associate Regional Counsel (C-14A), U.S. EPA, 77 West

Jackson Boulevard, Chicago, Illinois 60604-3590. You may telephone Ms. Loughlin at (312) 886-7158.

74. If Respondent does not file a written answer within thirty calendar days after receiving this complaint, the Administrator may issue a default order, after motion, under Section 22.17(a) of the Consolidated Rules. Default by Respondent constitutes an admission of all factual allegations made in the complaint and a waiver of Respondent's right to contest such factual allegations. Respondent must pay any penalty assessed in a default order without further proceedings 30 days after the default order becomes final under Section 22.27(c) of the Consolidated Rules.

#### **Settlement Conference**


77. Whether or not Respondent requests a hearing, Respondent may request an informal conference to discuss the facts of this action and to arrive at a settlement. To request a settlement conference, write to Cynthia Curtis, Air Enforcement and Compliance Assurance Branch (AE-17J), Air and Radiation Division, U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590, or telephone Ms. Curtis at (312) 353-6959.

78. Respondent's request for a settlement conference does not extend the thirty calendar day period to file a written answer to this complaint. Respondent may pursue simultaneously the settlement conference and adjudicatory hearing process. U.S. EPA encourages all parties facing civil penalties to pursue settlement through an informal conference. However, U.S. EPA will not reduce the penalty simply because the parties hold a conference.

Continuing Obligation to Comply

79. Neither the assessment nor payment of a civil penalty will affect Respondent's continuing obligation to comply with the Act and any other applicable federal, state, or local law.

Sept. 23, 1999  
Date

  
\_\_\_\_\_  
Margaret M. Guerriero, Acting Director  
Air and Radiation Division  
U.S. Environmental Protection  
Agency, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

DA-5 - 99 - 041

RECEIVED  
SEP 27 1999

In the Matter of E.P. Graphics Inc.

Docket No: : CAA-5-99-041

'99 SEP 27 10:33

CERTIFICATE OF FILING AND MAILING

I, Betty Williams, do hereby certify that I hand delivered the original of the foregoing Administrative Complaint and the Consent Agreement and Consent Order to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, and that I mailed accurate and true copies, along with a copy of the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits," 40 C.F.R. Part 22, and a copy of the Penalty Policy (described in the complaint) by first-class, postage prepaid, certified mail, return receipt requested, to the Respondent and Respondent's Counsel by placing it in the custody of the United States Postal Service addressed as follows:


Carl H. Muselman  
Registered Agent For  
EP Graphics Company  
153 S. Jefferson  
Berne, Indiana

I also certify that a copy of the Administrative Complaint and Consent Order were sent by First Class Mail to:

Felicia George, Assistant Commissioner  
Office of Enforcement  
Indiana Department of Environmental Management  
100 North Senate  
Indianapolis, Indiana 46206-6015

Phil Perry, Acting Chief  
Compliance Branch  
Indiana Department of Environmental Management  
100 North Senate, Room 1001  
Indianapolis, Indiana 46206-6015

on the 27 Day of September 1999.

  
Betty Williams, Secretary  
AECAS (IL/IN)

12-041

CERTIFIED MAIL RECEIPT NUMBER: P140 895450